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April 14, 2014

Mr. Thomas G. Redel, CPCU
Senior Vice President
Aon Risk Services Central, Inc.
4801 Main Street
Kansas City, MO 64112

Re: **Interpretive Opinion No. 02-14, Tennessee Workers' Compensation Form Filing Requirements**

Dear Mr. Redel,

This letter is written in response to your inquiry submitted, on or around February 12, 2014, to Tony Greer, Chief Counsel for Insurance with the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division"). Your inquiry requested clarification on whether third party administrators ("TPA") can make form filings for the workers' compensation residual market. The Division is treating this letter as a request for an interpretive opinion.

The Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") designated the National Council on Compensation Insurance ("NCCI") as a rate service organization tasked with assisting in gathering, compiling, and reporting statistical information relevant to workers' compensation insurance. In its capacity as a rate service organization, NCCI has refused to make certain form filings on behalf of insurers for the residual market.

Specifically, your letter asked the Division whether Aon Risk Services Central ("Aon"), acting as the TPA for the Tennessee Workers' Compensation Plan ("TWCP"), can make form filings for the residual market. It is the position of the Division that TPAs are not entitled to file forms on behalf of insurers.

The facts are understood by the Division as follows: Tennessee Code Annotated ("Tenn. Code Ann.") § 56-5-306(a) states that ". . . every insurer of commercial risk shall file with the commissioner all rates, supplementary rate information, policy forms and endorsements. . . ." Insurers and rate service organizations are directed to file certain requisite forms pursuant Tenn. Code Ann. §§ 56-5-306(b)-(c) which provide in pertinent part:

(b) With respect to workers' compensation insurance, a *rate service organization designated by one (1) or more insurers* shall develop and file for approval with the commissioner in accordance with this section, a filing on behalf of authorized insurers containing advisory prospective loss costs and supporting actuarial and statistical data for workers' compensation insurance. . . .

(c) *Each workers' compensation insurer, or group of insurers* under common ownership, shall individually file with the commissioner the multiplier and supporting information . . . (emphasis added).

Furthermore, an insurer and the designated rate service organization of an insurer are entitled to file forms pursuant to Tenn. Code Ann. § 56-5-307(d), which states:

(d) RATE SERVICE ORGANIZATION FILINGS.
(1)(A) The filings required by §§ 56-5-305 and 56-5-306, except § 56-5-306(c), including advisory prospective loss costs, other than rates for policies issued pursuant to any residual market mechanism for workers' compensation insurance established under § 56-5-314, *may be made by a rate service organization designated by an insurer.*
(B) The filings required by § 56-5-306 for rates for policies issued pursuant to any residual marker mechanism established under § 56-5-314 for workers' compensation insurance *shall be made by a rate service organization designated by the commissioner.*
(2) An insurer may make a filing, for lines other than workers' compensation, in compliance with §§ 56-5-305 and 56-5-306 and by giving written notice to the commissioner that the insurer is following rates as filed by a rate service organization in a particular line with any exceptions clearly set forth as are necessary to fully inform the commissioner. (emphasis added).[1]

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[1] Additionally, though an insurer may make form filings for itself, a rate service organization may not refuse to make such a filing. If requested to submit a form filing on behalf of a workers' compensation insurer, a rate service organization is required to file pursuant to Tenn. Code Ann. § 56-5-310(c) which provides:

> AVAILABILITY OF SERVICES. No rate service organization shall refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services . . . provided, that the furnishing of the requested services does not place an unreasonable burden on the rate service organization.

It is thus impermissible for a designated rate service organization to refuse to process the form filings of a workers' compensation insurer. Though an insurer may make its own form filings, if the insurer tasks a rate service organization with this filing, the rate service organization must comply.

Finally, Tenn. Code Ann. § 56-5-320(b) provides in pertinent part, ". . . [e]ach workers' compensation insurer shall adhere to the policy forms and rating rules filed by the designated rate service organization."

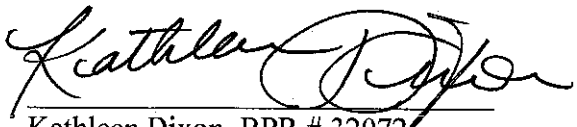
Based on the aforementioned applicable statutes, workers' compensation insurers and rate service organizations alone are given the power to file forms for the insurers. It appears, in light of Tenn. Code Ann. § 56-5-320(b), workers' compensation insurers are able to file their own form filings when the rate service organization refuses to make filings on behalf of the insurer, provided the insurer abides by all applicable filing rules set forth by the commissioner and adheres to any forms that have been filed by the rate service organization. Additionally, rate service organizations may file all forms on behalf of the workers' compensation insurer, with the exception of the insurer's multiplier and supporting information. Tenn. Code Ann. §§ 56-5-306(a) is clear that commercial insurers shall file forms. The use of the word *shall* in Tenn. Code Ann. §§ 56-5-306(a) denotes a mandatory requirement for commercial insurers to file forms. Tenn. Code Ann. § 56-5-306(b) grants permissive authority for designated rate service organizations to file forms on behalf of workers' compensation insurers. TPAs are not contemplated in any of the statutes indicating which entities may file forms on behalf of workers' compensation insurers. Therefore, TPAs are not statutorily permitted to submit form filings to the residual market.

Please note that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied, but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter and the position stated herein would be void. This letter expresses the Division's position on enforcement action only and does not purport to express legal conclusions on the issues presented. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication or use of this position may only be made with the Division's prior written consent.

This response by the Division is to a specific fact situation relating to call center employee licensure requirements regulated under the Insurance Producer Licensing Act and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance or of any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different facts or conditions might require a different response. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent by any person or entity. Any variation in the facts presented to the Division by Thomas G. Redel could result in a different conclusion than asserted herein.

If you have further questions or concerns regarding this letter, please feel free to contact me.

Nancy S. Jones,
Deputy Commissioner and General Counsel

By: 

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